

## **REMARKS**

### **1. Status**

Applicant submits this Reply to the Office Action<sup>1</sup> mailed June 4, 2009, ("Office Action"). By this Reply, Applicant has amended claims 9, 13, 26, and 28 and canceled claims 11 and 12. Applicant has also amended the specification to remove minor grammatical deficiencies and improve clarity. Accordingly, claims 9, 10, and 13-28, of which claims 9 and 28 are independent, are pending in this application. The originally-filed specification, drawings, and claims fully support the subject matter of the amendments to claims 9, 13, 26, and 28 as well as the amendments to the specification. Thus, this Reply introduces no new matter.

In the Office Action, claim 26 was objected; claims 13-20, 22, 25, 26, and 28 were rejected under 35 U.S.C. § 112, first paragraph; claim 26 was rejected under 35 U.S.C. § 112, second paragraph; claims 9-11, 13<sup>2</sup>, 14, 17, 18, and 21-27 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,650,018 to Müller ("Müller"); claim 12 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Müller in view of U.S. Patent No. 5,025,993 to Satake ("Satake"); claims 15, 16, 19, and 20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Müller in view of U.S. Patent No. 4,314,925 to Paquette ("Paquette"); and claim 28 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Müller in view of U.S. Patent No. 3,251,558 to Palyi ("Palyi").

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<sup>1</sup> The Office Action may contain a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicant declines to automatically subscribe to any statement or characterization in the Office Action.

<sup>2</sup> Applicant notes that claim 13 was not listed as rejected on page 4, at numeral 10 of the Office Action. However, the Examiner appears to reject claim 13 at the second full paragraph on page 5. Applicant respectfully requests appropriate clarification in the next Office communication.

Applicant respectfully traverses the objection of claim 26 and the rejection of claims 9-28 for at least the following reasons.

## **2. Objection of Claim 26**

In the Office Action, claim 26 was objected to for failing to depend from a preceding claim. Applicant has amended claim 26 to now depend from claim 25. Accordingly, Applicant respectfully requests the withdrawal of the objection of claim 26.

## **3. Rejection under 35 U.S.C. § 112, first paragraph**

In the Office Action, claims 13-20, 22, 25, 26<sup>3</sup>, and 28 were rejected under 35 U.S.C. § 112, first paragraph as failing to comply with the written description requirement. It appears the Examiner is attempting to strictly require Applicant to limit the claims to those words explicitly stated in the specification. See Office Action, pp. 3-4. Applicant disagrees and asserts that “[t]here is no requirement that the words in the claim must match those used in the specification disclosure. Applicants are given a great deal of latitude in how they choose to define their invention so long as the terms and phrases used define the invention with a reasonable degree of clarity and precision.” See *M.P.E.P.* § 2173.05(e), 8th Ed., Rev. 7 (July. 2008)(emphasis added). Further, “[a]n applicant is entitled to be his or her own lexicographer.” See *M.P.E.P.* § 2111.01(IV), 8th Ed., Rev. 7 (July. 2008).

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<sup>3</sup> Applicant notes that claim 26 was listed as rejected under 35 U.S.C. §112, first paragraph on page 3, at numeral 8 of the Office Action. However, the Examiner fails to reject claim 26 in any of following paragraphs on pages 3-4. Applicant respectfully requests appropriate clarification in the next Office communication.

Furthermore, in regards to claim 13, Examiner states, “the specification provides support for grinding the grains in grinding the grain in a **mill**.” Office Action, p. 3. It is unclear what the Examiner is trying to express. Applicant respectfully requests clarification in the next Office communication. Further, Applicant respectfully disagrees with the Examiner’s assertion and kindly directs the Examiner’s attention to originally filed claim 6, which recites “avoiding horizontal conveying elements in the mill.” It is noted that “Applicant may rely for disclosure upon the specification with original claims and drawings, as filed.” *M.P.E.P. § 608, 8th Ed., Rev. 7 (July. 2008)*(emphasis added). Also, Applicant kindly directs the Examiner’s attention to page three of the specification which states “[i]n order to largely avoid contamination of the grinding material . . . the mill largely does without horizontal, in particular, mechanical conveying elements.” Specification, p.3, (emphasis added). Accordingly, Applicant respectfully submits that there is adequate support in the specification for a mill at least on page 3, second paragraph of the specification as well as figure 1, element 25.

In regards to claims 14-16, the Examiner states that “[in] the specification, a **grinding machine** (p.4/paragraph 2), there is no support in the specification explicitly for provides support isolating, grinding, and pressing into pellets the **siftings** from the shelling machine and the **light product** from the aspirator (p.4/paragraph 4). There is no support for forming a **residue** as the grains are shelled and pressing the **residue** into pellets.” Office Action, p. 3. Again, it is unclear what the Examiner is trying to express. Applicant respectfully requests clarification in the next Office communication. However, it is clear that the Examiner herself has pointed directly to support in the

specification for “siftings from the shelling machine 20 and the light product accumulating from aspiration is isolated, separately ground, pressed into pellets, and, for example, earmarked for use as fuel.” Specification, p. 4, paragraph 4. Applicant respectfully asserts that the term “residue” is well known to mean product that remains after a part is taken or separated. As such, there exists ample support for the term “residue.” Furthermore, it appears the Examiner has contradicted herself in that she concedes “the specification provides support for isolating, grinding, and pressing into pellets the **siftings** from the shelling machine and the **light product** from the aspirator (p.4/paragraph 4).” Office Action, p.3, discussion of claims 18-20.

In regards to claim 17, the Examiner asserts that “there is no support for a step including sifting the grains after the second wetting process.” Office Action, p.3. Applicant respectfully disagrees and points the Examiner's attention to Figure 1 and its associated description on pages 3-4 of the specification. In particular, it is clearly shown that “[c]leaned as well as wetted and conditioned wheat exits from conditioning cells (not shown) into metering unit 21, and from there by way of magnet 23 into a wetting or conditioning aggregate (22). . .” Specification, p. 3, last paragraph (emphasis added). As such, grain passes a first and second wetting step prior to be sifted by the shelling machine 20. Accordingly, there is support for the features of claim 17.

In regards to claims 18-20, the Examiner states that “there is no support for forming a **residue** as the grains are shelled and pressing the **residue** into pellets.” Office Action, p. 3. However, as discussed above, Applicant respectfully asserts that

the term “residue” is well known to mean product that remains after a part is taken or separated. As such, there exists ample support for the term “residue.”

In regards to claim 22, the Examiner states that “the specification does not provide support for a second wetting process that is a light wetting process relative to the first wetting process.” Office Action, p. 4. Contrary to the Examiner’s assertion, the specification makes clear that the second wetting process is merely “superficially wetting.” Specification p.2, last paragraph. “Superficially” is a well established term which means trivial or insignificant. Applicant submits that by having a first wetting process followed by a secondary “superficially wetting” process, the degree of wetting in the secondary process is less than the first. As such, there is ample support for the features of claim 22.

Regarding claim 25, the Office Action states that “the reference does not provide support for a rotor and a stator having ***processing tools***, for ‘***at least one sifting basket***’ or wherein the shelled grains are ***sifted*** by the sifting basket. Office Action, p. 4. (underlining added). First, although believed to be a typographical error, Applicant requests clarification as to what “reference” is being relied upon. Further, Applicant respectfully disagrees with the Examiner’s assertion and kindly directs the Examiner’s attention to originally filed claim 8, which features “a rotatable rotor provided with processing tools and a stator comprised of processing tools and sifting baskets.” It is noted that “Applicant may rely for disclosure upon the specification with original claims and drawings, as filed.” *M.P.E.P.* § 608, 8th Ed., Rev. 7 (July. 2008)(emphasis added). Also, Applicant kindly directs the Examiner’s attention to figure 2 and page 5 of the specification. In particular, processing tools, such as, for example, the two sifting

elements, rotor 3, stator 1, and feed screw 10, are disposed within the processing zone 6 in order to process incoming grain through product inlet 5. Further, the sifting baskets consist of individual sifting sheets. See Specification, p. 5, paragraph 2. Applicant asserts that by disclosing (1) a shelling machine that sifts the siftings and light product of the shelling machine; (2) the shelling machine includes sifting baskets; and (3) the sifting baskets include sheets for sifting, that there is ample support in the disclosure for features of claim 25.

In regards to claim 28, the Examiner asserts that “while the specification provides support for conditioned wheat moving into a wetting aggregate **by way of a magnet** (p.2/paragraph 6), the specification does not provide support for **using a magnet to guide** wheat to the wetting aggregate.” Office Action, p. 4. Applicant respectfully disagrees, however in order to advance prosecution, claim 28 has been amended to recite “using a magnetic device to control the movement of the grains to a wetting aggregate.” Because the Examiner has admitted on page 4 of the Office Action that there is support in the disclosure for “wheat moving into a wetting aggregate by way of a magnet,” Applicant asserts that claim 28 is supported.

According to the foregoing arguments, Applicant respectfully requests the rejection of claims 13-20, 22, 25, 26, and 28 under 35 U.S.C. § 112, first paragraph be withdrawn.

#### **4. Rejection under 35 U.S.C. § 112, second paragraph**

In the Office Action, claim 26 was rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to point out and distinctly claim the subject matter which the applicant regards as the invention. In particular, the Examiner points to the recitation of “the roll” as not having sufficient antecedent basis. Accordingly, claim 26 has been amended to remove any such deficiency. As such, Applicant respectfully requests the withdrawal of the rejection of claim 26 under 35 U.S.C. § 112, second paragraph.

#### **5. Rejection under 35 U.S.C. § 102(b)**

In the Office Action, claims 9-11, 13, 14, 17, 18, and 21-27 were rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by Müller. The Office Action has not properly established that Müller discloses or suggests Applicant’s claims.

To properly anticipate Applicants’ claimed invention under 35 U.S.C. § 102(b), the Examiner must demonstrate the presence of each and every element of the claim in issue, either expressly described or under principles of inherency, in a single prior art reference. Furthermore, “[t]he identical invention must be shown in as complete detail as is contained in the . . . claim.” See M.P.E.P. § 2131, *quoting Richardson v. Suzuki Motor Co.*, 868 F.2d 1126, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). Finally, “[t]he elements must be arranged as required by the claim.” M.P.E.P. § 2131. In this application, Müller does not teach each and every element of the claims.

Müller discloses an apparatus for milling cereal. In Müller, as shown in figure 1, grain passes from an initial pre-cleaning stage 8, through wetting device 22, to a

storage device 62, and then a secondary wetting process at 73. Following the grains exit from element 73, the grains are stored temporarily, weighed, and ultimately ground. See Müller, col. 8, lines 29-35.

Claim 9, as presently amended, recites, among other features, “shelling the grains after the second wetting process in a shelling machine; grinding said shelled grains in a grinding machine; and polishing the shelled grains in a polishing machine after grinding.” Müller does not disclose a shelling of the grains after the second wetting process. On the contrary, any purported shelling occurs in advance of the second wetting process. As described, shelling of the grains in Müller occurs in element 16 where “an intensive surface cleaning of each individual grain takes place. The dry abraded material from scouring is taken away via a collection hopper 18. . .” As disclosed and clearly depicted by figure 1, element 16 occurs far upstream of element 73, the alleged second wetting process. This passage, having been relied upon by the Examiner (See Office Action page 5, lines 1-2) fails to disclose “shelling the grains after the second wetting process in a shelling machine” as recited by amended claim 9. (Emphasis added.)

Furthermore, in Müller, the grains are transferred from a wetting device 73 to a grinding device 77. However, device 77 cannot be regarded as a shelling machine as recited in claim 9. To the contrary, the grinding device 77 merely corresponds with a milling device. Further, as conceded by the Examiner, “Müller . . . does not disclose that the method includes polishing grains.” Office Action, p. 7.

For at least the forgoing reasons, the Office Action has not shown that Müller anticipates claim 9. Applicant therefore respectfully requests that the Examiner



withdraw the rejection of claim 9 under 35 U.S.C. § 102(b) and allow claim 9 accordingly.

Claims 10, 13, 14, 17, 18, and 21-27 depend from allowable independent claim 9, and are allowable at least due to their dependence as well as their additionally recited features. Accordingly, Applicant respectfully requests the Examiner to withdraw the rejection of claims 10, 14, 17, 18, and 21-27 under 35 U.S.C. § 102(b).

#### **6. Rejection under 35 U.S.C. § 103(a)**

In the Office Action, claims 12, 15, 16, 19, 20, and 28 was rejected under 35 U.S.C. § 103(a) as being unpatentable over combinations of Müller, Satake, Paquette, and Palyi. Applicant respectfully traverses these rejections since a *prima facie* case of obviousness has not been established.

The key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. See M.P.E.P. § 2142, 8th Ed., Rev. 6 (Sept. 2007). Such an analysis should be made explicit and cannot be premised upon mere conclusory statements. See *id.* “A conclusion of obviousness requires that the reference(s) relied upon be enabling in that it put the public in possession of the claimed invention.” M.P.E.P. § 2145. Furthermore, “[t]he mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art” at the time the invention was made. M.P.E.P. § 2143.01(III), internal citation omitted. Moreover, “[i]n determining the differences between the prior art and the claims, the question under 35 U.S.C. § 103 is not whether the differences

themselves would have been obvious, but whether the claimed invention as a whole would have been obvious.” M.P.E.P. § 2141.02(I), internal citations omitted (emphasis in original).

“[T]he framework for the objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). . . . The factual inquiries . . . [include determining the scope and content of the prior art and] . . . [a]scertaining the differences between the claimed invention and the prior art.” M.P.E.P. § 2141(II). “Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art.” M.P.E.P. § 2141(III).

In regards to claims 12, 15, 16, 19, 20, Satake and Paquette, fail to cure the deficiencies of Müller with regard to the features discussed above in connection with independent claim 9. Each of claims 12, 15, 16, 19, and 20 ultimately depend from independent claim 9 discussed above and, therefore, are submitted to be patentable for at least the same reasons as well as their additionally recited features. Individual reconsideration of the patentability of each claim on its own merits is respectfully requested.

Independent claim 28, as currently amended, although of a different scope from independent claim 9, includes recitations that are similar to independent claim 9. In particular, claim 28 now states “using the magnetic device to control the movement of the grains from the wetting aggregate to a shelling station.” As discussed above in connection with claim 9, Müller does not disclose a shelling of the grains after passing through the wetting aggregate. On the contrary, any purported shelling occurs in

advance of the second wetting process. As described, shelling of the grains in Müller occurs in element 16 where "an intensive surface cleaning of each individual grain takes place. The dry abraded material from scouring is taken away via a collection hopper 18 . . ." As disclosed and clearly depicted by figure 1, element 16 occurs far upstream of element 73, the alleged second wetting process. Furthermore, the Examiner's reliance on the teachings of Palyi fails to cure this deficiency.

For at least the above reasons, Müller and Palyi, taken individually or in combination, do not teach or suggest each and every feature of claim 28. Accordingly, a *prima facie* case of obviousness has not been established and the Applicant respectfully requests that the Examiner withdraw the rejection of claim 28 under 35 U.S.C. § 103(a).

### Conclusion

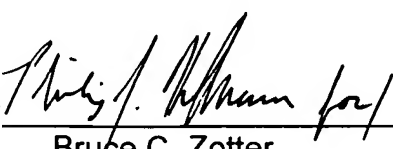
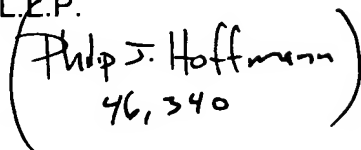
In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account 06-0916.

Respectfully submitted,

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Dated: October 5, 2009

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